

HOUSE BILL 859

D4, E2

11r1606
CF SB 768

By: **Delegates Dumais, Clippinger, A. Kelly, Simmons, Valderrama, Waldstreicher, and Wilson**

Introduced and read first time: February 11, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Child Abuse – Out of Court Statements of Child Victims**

3 FOR the purpose of altering the age for the admission into evidence of a certain out of
4 court statement made by a child victim; adding counselors and caseworkers to
5 the list of certain professionals to whom a child victim's out of court statement
6 was made and who may testify concerning the statement; repealing provisions
7 that allow certain out of court statements to be admissible if the child victim
8 does not testify; requiring the child victim to testify as a prerequisite to the
9 admissibility of the child victim's out of court statement; requiring notice to
10 certain individuals of the audio or visual recording of a certain out of court
11 statement by a child victim; limiting the circumstances under which notice of
12 the content of a certain out of court statement by a child victim is required to be
13 provided and under which a certain deposition is authorized; eliminating the
14 requirement that the court examine the child victim in chambers under certain
15 circumstances; and generally relating to out of court statements of child victims.

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Procedure
18 Section 11–304
19 Annotated Code of Maryland
20 (2008 Replacement Volume and 2010 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article – Criminal Procedure**

24 11–304.

25 (a) In this section, “statement” means:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (1) an oral or written assertion; or

2 (2) nonverbal conduct intended as an assertion, including sounds,
3 gestures, demonstrations, drawings, and similar actions.

4 (b) Subject to subsections (c), (d), and (e) of this section, the court may admit
5 into evidence in a juvenile court proceeding or in a criminal proceeding an out of court
6 statement to prove the truth of the matter asserted in the statement made by a child
7 victim who:

8 (1) is under the age of [12] **13** years; and

9 (2) is the alleged victim or the child alleged to need assistance in the
10 case before the court concerning:

11 (i) child abuse under § 3–601 or § 3–602 of the Criminal Law
12 Article;

13 (ii) rape or sexual offense under §§ 3–303 through 3–307 of the
14 Criminal Law Article;

15 (iii) attempted rape or attempted sexual offense in the first
16 degree or in the second degree under §§ 3–309 through 3–312 of the Criminal Law
17 Article; or

18 (iv) in a juvenile court proceeding, abuse or neglect as defined in
19 § 5–701 of the Family Law Article.

20 (c) An out of court statement may be admissible under this section only if the
21 statement was made to and is offered by a person acting lawfully in the course of the
22 person’s profession when the statement was made who is:

23 (1) a physician;

24 (2) a psychologist;

25 (3) a nurse;

26 (4) a social worker; [or]

27 (5) a principal, vice principal, teacher, or school counselor at a public
28 or private preschool, elementary school, or secondary school;

29 **(6) A COUNSELOR; OR**

30 **(7) A CASEWORKER.**

1 (d) (1) Under this section, an out of court statement by a child victim may
2 come into evidence to prove the truth of the matter asserted in the statement:

3 (i) if the statement is not admissible under any other hearsay
4 exception; and

5 (ii) **[regardless of whether] IF** the child victim testifies.

6 **[(2)** If the child victim does not testify, the child victim's out of court
7 statement will be admissible only if there is corroborative evidence that:

8 (i) the defendant had the opportunity to commit the alleged
9 crime; or

10 (ii) the child respondent or the alleged offender had the
11 opportunity to commit the alleged abuse or neglect.]

12 **[(3)] (2)** To provide the defendant, child respondent, or alleged
13 offender with an opportunity to prepare a response to the statement, the prosecuting
14 attorney shall serve on the defendant, child respondent, or alleged offender and the
15 attorney for the defendant, child respondent, or alleged offender within a reasonable
16 time before the juvenile court proceeding and at least 20 days before the criminal
17 proceeding in which the statement is to be offered into evidence, notice of:

18 (i) the State's intention to introduce the statement; **[and]**

19 (ii) **ANY AUDIO OR VISUAL RECORDING OF THE STATEMENT;**

20 **AND**

21 **(III) IF AN AUDIO OR VISUAL RECORDING OF THE**
22 **STATEMENT IS NOT AVAILABLE,** the content of the statement.

23 **[(4)] (3)** (i) **[The] IF AN AUDIO OR VISUAL RECORDING OF THE**
24 **STATEMENT IS NOT AVAILABLE, THE** defendant, child respondent, or alleged
25 offender may depose a witness who will testify under this section.

26 (ii) Unless the State and the defendant, child respondent, or
27 alleged offender agree or the court orders otherwise, the defendant, child respondent,
28 or alleged offender shall file a notice of deposition:

29 1. in a criminal proceeding, at least 5 days before the
30 date of the deposition; or

31 2. in a juvenile court proceeding, within a reasonable
32 time before the date of the deposition.

1 (iii) Except where inconsistent with this paragraph, Maryland
2 Rule 4-261 applies to a deposition taken under this paragraph.

3 (e) (1) A child victim's out of court statement is admissible under this
4 section only if the statement has particularized guarantees of trustworthiness.

5 (2) To determine whether the statement has particularized guarantees
6 of trustworthiness under this section, the court shall consider, but is not limited to, the
7 following factors:

8 (i) the child victim's personal knowledge of the event;

9 (ii) the certainty that the statement was made;

10 (iii) any apparent motive to fabricate or exhibit partiality by the
11 child victim, including interest, bias, corruption, or coercion;

12 (iv) whether the statement was spontaneous or directly
13 responsive to questions;

14 (v) the timing of the statement;

15 (vi) whether the child victim's young age makes it unlikely that
16 the child victim fabricated the statement that represents a graphic, detailed account
17 beyond the child victim's expected knowledge and experience;

18 (vii) the appropriateness of the terminology of the statement to
19 the child victim's age;

20 (viii) the nature and duration of the abuse or neglect;

21 (ix) the inner consistency and coherence of the statement;

22 (x) whether the child victim was suffering pain or distress when
23 making the statement;

24 (xi) whether extrinsic evidence exists to show the defendant or
25 child respondent had an opportunity to commit the act complained of in the child
26 victim's statement;

27 (xii) whether the statement was suggested by the use of leading
28 questions; and

29 (xiii) the credibility of the person testifying about the statement.

30 (f) In a hearing outside of the presence of the jury or before the juvenile
31 court proceeding, the court shall:

1 (1) make a finding on the record as to the specific guarantees of
2 trustworthiness that are in the statement; and

3 (2) determine the admissibility of the statement.

4 (g) (1) In making a determination under subsection (f) of this section, the
5 court shall examine the child victim in a proceeding in the judge's chambers, the
6 courtroom, or another suitable location that the public may not attend unless:

7 (I) the child victim:

8 [(i)] 1. is deceased; or

9 [(ii)] 2. is absent from the jurisdiction for good cause shown or
10 the State has been unable to procure the child victim's presence by subpoena or other
11 reasonable means; OR

12 (II) THE COURT DETERMINES THAT AN AUDIO OR VISUAL
13 RECORDING OF THE CHILD VICTIM'S STATEMENT MAKES AN EXAMINATION OF
14 THE CHILD VICTIM UNNECESSARY.

15 (2) Except as provided in paragraph (3) of this subsection, any
16 defendant or child respondent, attorney for a defendant or child respondent, and the
17 prosecuting attorney may be present when the court hears testimony on whether to
18 admit into evidence the out of court statement of a child victim under this section.

19 (3) When the court examines the child victim as paragraph (1) of this
20 subsection requires:

21 (i) one attorney for each defendant or child respondent, one
22 attorney for the child victim, and one prosecuting attorney may be present at the
23 examination; and

24 (ii) the court may not allow a defendant or child respondent to
25 be present at the examination.

26 (h) (1) This section does not limit the admissibility of a statement under
27 any other applicable hearsay exception or rule of evidence.

28 (2) This section does not prohibit the court in a juvenile court
29 proceeding from hearing testimony in the judge's chambers.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2011.